

## II. REMARKS

### **Formal Matters**

Claims 21-24 are pending after entry of the amendments set forth herein.

Claim 21 has been amended to insert the sequences as claimed within previously pending now canceled claim 20.

Claims 1-20 have been canceled from the application.

No new matter has been added.

### **35 U.S.C. §112, first paragraph rejection**

Claims 1, 4, 5, 17 and 21-24 were rejected under 35 U.S.C. §112, first paragraph. The rejection is traversed as applied and as it might be applied to the presently pending claims.

The rejection appears to be based on an argument that the specification is only enabling with respect to integrin binding motifs of RGD within the sequence. For this reasons the rejection was not made with respect to claims 9 and 20. The rejection was applied only to claims which encompass other sequences, i.e. those without the RGD.

The amended claim 21 includes sequences of previously pending now canceled claim 20. All of the sequences include the RGD motif. Accordingly, the rejection is believed to have been overcome and its reconsideration and withdrawal as it might be applied to the pending claims is respectfully requested.

Within section 4 of the rejection beginning on page 5 the same claims were again rejected as not complying with the written description requirement. In support of the rejection it was argued that the specification was only enabling with respect to specific sequences including SEQ ID NOS: 43, 44, 45 and 47. In that these SEQ ID NOS. are included within currently amended claim 21 the rejection is believed to have been overcome. Further, applicants note that the rejection was not applied against previously pending now canceled claim 20 which recites these sequences which are now recited within amended claim 21.

### **Rejection under 35 U.S.C. §102**

Claims 1-5, 7-9, 12, 13 and 16-22 were rejected under 35 U.S.C. §102 as anticipated by or in the alternative under 35 U.S.C. §103 as obvious over published PCT WO 99/60017 to Rowe. The rejection is traversed as applied and as it might be applied to the presently pending claims.

Currently pending independent claim 21 claims a formulation comprising a carrier and

therapeutically amount of a peptide. The peptide is at least one of the specifically listed four peptides. The claim does not encompass sequences which include additional amino acids such as the sequences taught within Rowe. Accordingly, the 35 U.S.C. §102 rejection as anticipating the claims is overcome by amended claim 21.

The Examiner has correctly recognized that Rowe does refer to fragments and recites specific fragments. Based on such the claims are rejected as obvious over Rowe. This position is respectfully traversed.

Applicants point out that the four sequences which are recited within amended claim 21 show improved unexpected results with respects to other sequences which are part of the longer sequence taught by Rowe.

Within Example 1 beginning on page 13 of the specification applicants have recited six specific sequences. The data shown within the specification such as the data of Figure 4 clearly show that the four specific sequences which are claimed as part of the formulation of claim 21 demonstrate improved unexpected results relative to other sequences which are fragments of the larger sequence disclosed by Rowe.

It is applicants' position that Rowe does not provide a *prima facie* case of obviousness of the invention now claimed within claim 21. This is because Rowe does not teach towards the specific sequences disclosed and claimed by applicants. However, notwithstanding this position any *prima facie* case of obviousness is believed to be overcome by the data presented by applicants demonstrating that the specifically claimed sequences provide improved unexpected results relative to other sequences which form a part of the overall sequence disclosed by Rowe.

### **35 U.S.C. §103 Rejection over Cheng et al. in view of Cerny et al.**

Claims 1-5, 8 and 12-16 were rejected over a combination of Cheng et al. in view of Cerny et al.

The rejection has been rendered moot by the cancellation of these claims from the application.

### **35 U.S.C. §103 Rejection over Rowe in combination with Cerny et al.**

Claims 14, 15, 23 and 24 were rejected under 35 U.S.C. §103 over Rowe in view of Cerny et al.

First, it is applicants' position that it would not be obvious for one of ordinary skill in the art to combine the references in the manner suggested within the rejection. However, the rejection has been overcome in view of the claim amendments. The rejection was not applied against previously pending now canceled claim 20. The limitations of claim 20 are now included within independent claim 21.

Claims 23 and 24 are dependent directly on independent claim 21. Accordingly, the rejection has been overcome.

### **Double Patenting Rejection**

Claims 1, 2 and 12 were rejected under the judicially created doctrine of obviousness type double patenting over claims within co-pending application serial no. 09/812,485. The rejection has been rendered moot by the cancellation of these claims from the application.

### **CONCLUSION**

The 35 U.S.C. §112, first paragraph rejections are believed to have been overcome and/or rendered moot in view of the cancellation of claims 1-20 and the amendment to claim 21 which recites specific amino acid sequences which include the RGD binding motif and further because the claims now only encompass sequences which are specifically disclosed and described within the specification thereby providing a clear written description. The 35 U.S.C. §102 rejections over Rowe were overcome in that the claims are restricted to formulations which include the specifically recited sequences and not sequences which include additional amino acids. The rejection is overcome as applied under 35 U.S.C. §103 in that Rowe does not teach towards the specifically recited sequences and thereby does not provide a *prima facie* case of obviousness. Notwithstanding such applicants have presented data showing improved and unexpected results which overcome any such *prima facie* case of obviousness. The rejection over Cheng in view of Cerny et al. as well as the rejection over Rowe in view of Cerny et al. has been rendered moot by the cancellation of these claims. In a similar manner the double patenting rejection has been rendered moot in view of the cancellation of the claims rejected. In view of such reconsideration and withdrawal of the rejections and allowance of the application is respectfully requested.

In the event the Examiner finds that minor issues remain unresolved the Examiner is respectfully requested to contact the undersigned attorney at the indicated telephone number to arrange for an interview to expedite the disposition of this application. In the event additional petitions are required including additional extensions the applicants petition for any required relief and authorize the Commissioner to charge the costs of such petitions to our Deposit Account No. 50-0815, Attorney Docket No. BEAR-006.

Respectfully submitted,  
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